



INTERIOR BOARD OF INDIAN APPEALS

Victor T. Fleury v. Alaska Regional Director, Bureau of Indian Affairs

54 IBIA 83 (10/04/2011)

Denying Reconsideration of:
54 IBIA 20



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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VICTOR T. FLEURY,)	Order Denying Reconsideration
Appellant,)	
)	
v.)	
)	Docket No. IBIA 11-118-1
ALASKA REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	October 4, 2011

On August 10, 2011, the Board of Indian Appeals (Board) dismissed, for failure to prosecute, two consolidated appeals from an April 15, 2011, decision (Decision) of the Alaska Regional Director (Regional Director), Bureau of Indian Affairs (BIA), denying an application from Susan C. Voyles to convey to Victor T. Fleury, by gift deed, her fractional interest in Native allotment A-060538. *See Voyles v. Alaska Regional Director*, 54 IBIA 20. Voyles and Fleury (collectively, Appellants) had each separately appealed the Decision, but neither had indicated that they completed service on the Regional Director and on the Assistant Secretary - Indian Affairs. The Board ordered each Appellant to do so and to inform the Board that they had complied with the order.¹ When the Board heard nothing from either Appellant, the Board dismissed the appeals.

On August 19, 2011, the Board received a petition for reconsideration from Fleury, arguing that both Appellants had initially served their appeals by certified mail, and then in response to the Board's order, had "resubmitted" their appeals and "mailed everything back to all agencies [in the] middle of May 2011. Where is all the material we mailed in?" Letter from Victor Fleury to Board, Aug. 15, 2011 (Petition). Enclosed with Fleury's Petition are copies of certified mail receipt cards returned to Fleury between May 13 and 16, 2011, from the Alaska Regional Director's office, the Board, and the Alaska Regional Solicitor's office, which we understand to show that Fleury had initially served a copy of his notice of appeal on the Regional Director, the Board, and the Solicitor's office, although not on the Assistant Secretary - Indian Affairs.

¹ See Pre-Docketing Notice, Order Consolidating Appeals, and Order for Each Appellant to Complete Service, May 24, 2011.

The Board did not receive a request for reconsideration from Voyles, and the deadline for filing such a request expired on September 9, 2011. *See* 43 C.F.R. § 4.315(a) (petition for reconsideration must be filed within 30 days from the date of the Board's decision).²

Discussion

Reconsideration of a decision of the Board will be granted “only in extraordinary circumstances.” *Id.* In the present case, whether or not Fleury could show that he complied with the Board's service order, the failure by Voyles to have sought reconsideration of our dismissal of the appeals is dispositive. Fleury, as the prospective grantee named in Voyles' disapproved application, does not have standing to independently pursue an appeal, and thus cannot satisfy the extraordinary circumstances standard for granting reconsideration and reopening his appeal.

It is well-established that a prospective Indian grantor of his or her interest in trust or restricted property may change his or her mind at any time before BIA has approved a deed of conveyance. *See Estate of Bitonti v. Alaska Regional Director*, 43 IBIA 205, 214 (2006); *Estate of Samuel Johnson (Johns) Aimsback (Aims Back)*, 45 IBIA 298, 304 (2007). In summarily dismissing the appeals of both Voyles and Fleury, the Board found it unnecessary to address whether Fleury had standing to independently pursue an appeal from the Regional Director's disapproval decision. But it is clear that he did not. Any potential right or interest that a prospective grantee may have in the consummation of a transaction is purely derivative of the grantor's continuing intent to convey the property. When a grantor whose gift deed application has been disapproved by BIA does not pursue an appeal, we think that conclusively cuts off any potential right of the prospective grantee to challenge BIA's disapproval decision. In a gift deed transaction, the Department has a fiduciary duty to the grantor and only to the grantor. *See Celestine v. Acting Portland Area Director*, 26 IBIA 220, 222 (1994) (citing *Smith v. Billings Area Director*, 18 IBIA 36 (1989)).

In the present case, Fleury has submitted proof that he initially served his notice of appeal on the Regional Director. He makes a general representation that he “mailed

² In our order of dismissal, we noted that Voyles' “appeal” consisted of a letter from her addressed to BIA, but with a “cc” sent to the Board. Because the letter appeared to take issue with certain findings in the Regional Director's decision, and although it was not entirely clear that Voyles intended to pursue an appeal to the Board, we construed it as a notice of appeal. *See* 54 IBIA at 20 n.1.

everything back to all the agencies” in response to the Board’s order to serve, which arguably could be construed as meaning that he also completed service on the Assistant Secretary. Fleury makes his representations in the plural — that both he *and* Voyles — complied with the service requirements, although he offers no statement from Voyles or other evidence that she complied with the Board’s order. More significantly, however, is the fact that Voyles has not sought reconsideration of the Board’s dismissal of the appeals. When the Board dismisses, for lack of prosecution, appeals from both a prospective grantor and a prospective grantee that challenge a BIA decision to disapprove a gift conveyance, and the prospective grantor does not seek reconsideration, the prospective grantee cannot demonstrate that extraordinary circumstances exist to grant reconsideration and reopen the prospective grantee’s appeal.

If it turns out that Voyles does want to convey her interest to Fleury, the proper course is for her to submit another application to BIA, addressing the reasons that the Regional Director gave for disapproving her previous application.³ But having dismissed the consolidated appeals for failure to prosecute, and having received no request from Voyles to reconsider our dismissal or in support of Fleury’s Petition, we conclude that there are no extraordinary circumstances present that would warrant granting Fleury’s Petition.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board denies reconsideration of 54 IBIA 20.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

³ In the Decision, the Regional Director concluded that the transaction was not in Voyles’ long range best interest.